

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

**FILED**

FEB 29 2000

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA

KENNETH HICKS and ERNEST  
WRIGHT, )

Plaintiffs, )

vs. )

BUFFALO ROCK COMPANY, INC., )

Defendant. )

CIVIL ACTION NUMBER

98-C-2443-S

**ENTERED**

MAR 31 2000



**MEMORANDUM OPINION ON DEFENDANT'S  
MOTION TO ENFORCE SETTLEMENT**

On December 14, 1999, Adam M. Porter, counsel for Plaintiffs, wrote to Clifford M. Spencer, Jr., counsel for Defendant. The letter concluded by making a settlement demand of \$15,000 for Plaintiff Ernest Wright and \$40,000 for Plaintiff Kenneth Hicks. On February 19, 2000, Porter reiterated the settlement demand in a conversation with Spencer. Two days later, Spencer accepted the offer on behalf of his clients. He prepared and forwarded to Porter a *Stipulation of Dismissal and Settlement Agreements*. On February 23, Porter informed Spencer that his clients "wanted to back out of the settlement." Spencer Aff.

There is no dispute but that Porter had the authority to settle the case on behalf of his clients.

Defendant Buffalo Rock Company has now moved to enforce the settlement.



The settlement is due to be enforced. While Porter's lips are silenced by the cloak of attorney client privilege, it is highly unlikely that he would have made the settlement demand without the knowledge and consent of his clients. The settlement amount for each Plaintiff is well within a range of reasonableness, given the damages he proposed to prove at the trial of this case. Doc. 23, pp. 7, 14. But the pivotal fact is that at no time prior to Spencer's acceptance of their settlement demands did Plaintiffs communicate to Buffalo Rock, its counsel, or the Court that Porter no longer had the authority to settle their cases.

As a general proposition of law, a lawyer has the authority to settle a case on behalf of his client, unless the client affirmatively communicates to the adverse party a lack of settlement authority. *Ford v. Citizens & Southern Nat'l Bank, Cartersville*, 928 F.2d 1118, 1121 (11<sup>th</sup> Cir.1991); *In re Cheriogotis*, 188 B.R. 996, 999-1000 (M.D. Ala.1994). And once a plaintiff's offer of settlement is accepted by a defendant, the plaintiff is not thereafter free to change his mind and withdraw the offer. *Peerless Casualty Co. v. Housing Authority*, 228 F.2d 376, 378 (5<sup>th</sup> Cir.1955); *In re Hopson*, 216 B.R. 297, 301 (N.D. Ga.1997).

By separate order, the motion to enforce the settlement agreement will be granted.

DONE this 29<sup>th</sup> day of February, 2000.

A handwritten signature in cursive script, appearing to read "U. W. Clemon", written in black ink.

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UNITED STATES DISTRICT JUDGE  
U. W. CLEMON